

BEFORE THE NATIONAL LABOR RELATIONS BOARD
HON. ARTHUR J. AMCHAN
ADMINISTRATIVE LAW JUDGE

Case No. 05-CA-141077

LOCAL 689, AMALGAMATED TRANSIT	}
UNION,	}
	}
Respondent,	}
	}
v.	}
	}
TAMAR C. SIMMONS,	}
	}
Charging Party.	}
	}

POST RULING EXCEPTIONS
ON BEHALF OF RESPONDENT, LOCAL 689, ATU

Respondent Local 689, Amalgamated Transit Union, files the following exceptions to the Order issued in the above captioned matter by Administrative Law Judge Arthur J. Amchan on August 25, 2015:

1. There is no evidence that the work evaluation was discriminatory.
2. The retaliatory discharge allegation had been removed from the charge prior to the hearing. Any reference to the discharge is inappropriate and must be removed from the award.

The reasons for these exceptions will be set forth below.

I. THE EVALUATION OF TAMAR SIMMONS WAS NOT DISCRIMINATORY.

In the August 25, 2015 Order, Judge Amachan states:

“Respondent, by Jeter, violated Section 8(a)(3) and (1) by giving Simmons a bad performance review, issuing her the September 12 warning and sending her the September 13 email chastising Simmons for inadequate upkeep of the ATU bulletin board.”

The Order then goes on to reason that:

“Thus the issue with regard to the performance review that Jeter gave to Simmons, the warning and the reprimand, is whether they were motivated in whole or in part by Simmons’ protected activities in filing a grievance. Since Simmons had worked since 2010 without a performance review and there is absolutely no evidence that her job performance was inadequate between 2010 and 2014, I find that the bad performance review was motivated by Simmons’ protected activities (and maybe Garrett’s as well).”

The evidence introduced at the hearing shows that the performance review given to Tamar Simmons was not because of retaliation. Rather the clerical office positions and duties at the Local 689 front office were being reshuffled and all of the employees were given performance reviews. On September 8, 2014, Local 689 President Jackie Jeter held a staff meeting with several employees, including Ms. Simmons, to discuss changes in office procedure. (TR 80) As Ms. Simmons herself testified, the phone system at the Union hall had recently been overhauled eliminating many of the automated features. Callers would now get easier access to a live person and one of Ms. Simmons strengths was dealing with phone calls. Much of the focus at the staff meeting was finding ways to relieve her of some duties in order to concentrate on answering the phone calls. (TR 49-51, 83-85) President Jeter compiled a new list of duties for Ms. Simmons that would allow her to specialize in fielding the phone calls coming in to the Union hall. (Respondent Exhibit 1)

There were other staff members at that meeting on September 8 including Ms. Sanders and Ms. Crawford who also performed clerical work at the Union hall. (TR 84) Some of the tasks that were shifted away from Ms. Simmons were reassigned to other employees. (TR 85) Ms. Simmons was now the main receptionist. (TR 86) President Jeter also testified that she informed

the employees at the meeting about upcoming performance evaluations.

Q: Okay. So you also said at this meeting that they were going to be evaluated on their tasks, correct?

A: They were going to be evaluated on their job performance--

Q: Job performance.

A: Overall.

(TR 86)

Ms. Simmons and the other employees were given notice about upcoming job performances on September 8, 2014. The grievance Ms. Simmons filed about work being taken away was not presented until September 11. (GC ex. 2) Therefore, the creation of these performance reviews was not in any way retaliatory, but were set up before Ms. Simmons grieved about anything.

President Jeter made evaluations for everyone in the office. (TR 92) Following the issuance of Ms. Simmons job review, President Jeter met with her to discuss the evaluation. (GC 7) The meeting was not disciplinary but was only about discussing the evaluation. (TR 89) Ms. Simmons disagreed that she deserved a poor rating in the wasting office materials category and explained her position. President Jeter changed her rating from a 1 to a 4 after listening to Ms. Simmons' reasoning that she performed well in this category. (TR 89) Ms. Simmons rating for wasting time was also changed from a 1 to a 3 during her meeting with President Jeter. (GC 7) Clearly President Jeter was willing to have an open dialogue with the employees, including Ms. Simmons, and listened to the reasons why they felt an evaluation was unfair.

The record is also void of any evidence that Ms. Simmons was good at the tasks for which she was rated poorly. There is nothing that indicates President Jeter made an improper

evaluation when it came to Ms. Simmons job performance review. Though there was, contrary to the Judge's opinion, considerable evidence that her performance had been substandard. Most directly was the testimony of President Jeter herself who observed daily office operations over the entire period. Local 689 uses the MUMS filing system which creates electronic records for all of the members but after all the years working at the office Ms. Simmons does "not know how to actually open up and create a file in MUMS" . (TR 107) Debra Sanders was in charge of this operation and Ms. Simmons was assigned in 2013 and Spring 2014 to assist her with the MUMS files. (TR 109) Ms. Simmons was supposed to backup Ms. Sanders but due to all the mistakes that Simmons was making in entering the information Sanders said she would do the work herself. (TR 108) Ms. Simmons was also tasked at one point with helping Katherine Crawford create accurate records of the grievances. Again though, Ms. Simmons was incapable of properly opening up a file and putting the pertinent information in the file. Since this was creating more work for Ms. Crawford, grievances were just assigned a number in the logbook and the files would be actually opened whenever Crawford came in. Ms. Simmons was not to be involved with this process anymore. (TR 109)

Local 689 and President Jeter had begun utilizing job performance reviews following the restructuring of inter office duties. The evaluations were implemented as a tool to improve the efficiency of the office not as means of disciplining Ms. Simmons. All of the employees were given evaluations and were put on notice of these reviews prior to Ms. Simmons filing her initial grievance. President Jeter met with Ms. Simmons after issuing the review and made several favorable rating changes after listening to her reasoning. There is no indication that the performance review was improperly made poor and nothing on record shows that President Jeter

evaluated Ms. Simmons inaccurately. The Union was not retaliatory when making the job performance and any reference to such action should be removed from the record.

II. THE REFERENCE TO DISCHARGE IN THE ORDER IS WITHOUT BASIS.

The Order lists four separate activities which Local 689 must cease and desist performing. The third one states:

(C) Discharging or otherwise discriminating against any of its employees for engaging in and/or planning to engage in protected concerted activities, including the filing of grievances.

That instruction is wholly inappropriate and the reference to discharge must be removed from the order.

Ms. Simmons filed her initial charge against Local 689 on November 15, 2014. Part of the basis of that charge was the termination of Ms. Simmons employment. (GC ex. 1-A) The charge was amended on March 2, 2015 and did not include any allegations concerning Ms. Simmons discharge. (GC ex. 1-C)

The Order issued on August 25 states:

“The General Counsel alleges the Respondent, by its President and Business Agent, Jackie Jeter, violated Section 8(a)(1) by coercively instructing Tamar Simmons not to speak with fellow employees or shop stewards about working conditions and implicitly threatening her with discharge because she caused the Union to file grievances on her behalf....Respondent discharged Simmons in November 2014. However, her discharge is before an arbitrator and is not before me.”

The amended charge, which does not include allegations about her termination, was the matter before the board. The Respondent Union had no notice or opportunity to defend against a

complaint of discriminatory discharge. Likewise, the Complaint has no allegation of discriminatory discharge of Ms. Simmons or of anyone else. (GC ex. 1-E) As the Judge referenced, the discharge issue went before an arbitrator in an entirely separate proceeding. (Order, p. 1) Therefore, any mention of the discharge and in particular instructing Local 689 to cease and desist from threatening discharge must be stricken from the Order. The matter before the Board does not concern Ms. Simmons termination and it is improper for the Order to address discharge.

Respectfully submitted,

_____/s/ Douglas Taylor_____
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